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EXAMINER

TORRES, JOSEPH D

ART UNIT

PAPER NUMBER

2133

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
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Office Action Summary

Application No.

09/839,827

Applicant(s)

CHOKSI, OJAS T.

Examiner

Joseph D. Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-13,15-18,22,24 and 25 is/are rejected.
- 7) ☒ Claim(s) 2,8,14 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (Claims 1-18 and 22-25) in the reply filed on 01/04/2005 is acknowledged.

Claims 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Response to Arguments

2. Applicant's arguments filed 05/03/2005 have been fully considered but they are not persuasive.

The Applicant contends, "Claim 1 is not disclosed, taught, or suggested by Donnan. For example, Donnan does not disclose, teach, or suggest 'determining an allowed number of retransmissions for the frame based on the position of the frame in the set of related frames' as recited in Claim 1. Donnan only makes a decision to retransmit but does not disclose, teach, or suggest any technique for 'determining an allowed number of retransmissions.'"

The Examiner disagrees and asserts that the Abstract in Donnan explicitly teaches that a variable, $V(T)$, is associated with each retransmitted frame and indicates the order in which the retransmitted frame with which it is associated is retransmitted relative to the sequence of frames transmitted for the first time (Note: frames are distinguished from

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each other by their position in a sequence according to their sequence number in the sequence; hence each $V(T)$ for its associated retransmission frame is based on the position of the retransmission relative to the sequence of frames). In addition the Abstract in Donnan explicitly teaches that the transmitting station retransmits previously retransmitted frames, only if the $V(T)$ value associated with a retransmitted frame is less than the receive sequence number $N(R)$, hence $N(R)$ is the maximum allowed number of retransmissions for the retransmitted frame, that is, Donnan explicitly teaches using the inequality $V(T) < N(R)$ to determine the maximum number of retransmission attempts for a given retransmission frame. Hence; Donnan teaches using the inequality $V(T) < N(R)$ to determine an allowed number of retransmissions for the retransmission frame associated with $V(T)$ based on the position of the frame in the set of related frames since both $V(T)$ and $N(R)$ are based on the position of the frame in the sequence of related frames.

The Examiner disagrees with the applicant and maintains all rejections of claims 1-18 and 22-25. All amendments and arguments by the applicant have been considered. It is the Examiner's conclusion that claims 1-18 and 22-25 are not patentably distinct or non-obvious over the prior art of record in view of the references, Donnan; Robert A. (US 4439859 A) in view of Rezaiifar; Ramin et al. (US 6618375 B2, hereafter referred to as Rezaiifar) as applied in the last office action, filed 02/07/2005. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3-7, 9-13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Donnan; Robert A. (US 4439859 A).

35 U.S.C. 102(b) rejection of claims 1, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16 and 18.

See the Final Action filed 02/07/2005 for detailed action of prior rejections.

35 U.S.C. 102(b) rejection of claims 5, 11 and 17.

Note: V(T), is associated with each retransmitted frame and indicates the order in which the retransmitted frame with which it is associated is retransmitted relative to the sequence of frames transmitted for the first time and hence must be calculated for every retransmitted frame regardless of its position in the sequence or regardless of what subset the frame is in.

In addition, MPEP § 714.04 states, "In the consideration of claims in an amended case where no attempt is made to point out the patentable novelty, the claims should not be allowed. See 37 CFR 1.111 and MPEP § 714.02. An amendment failing to point out the patentable novelty which the applicant believes the claims present in view of the state of the art disclosed by the references cited or the objections made may be held to

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be not fully responsive and a time period set to furnish a proper reply if the statutory period has expired or almost expired (MPEP § 714.03). However, if the claims as amended are clearly open to rejection on grounds of record, a final rejection should generally be made”.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donnan; Robert A. (US 4439859 A) in view of Rezaiifar; Ramin et al. (US 6618375 B2, hereafter referred to as Rezaiifar).

35 U.S.C. 103(a) rejection of claims 22 and 25.

See the Final Action filed 02/07/2005 for detailed action of prior rejections.

35 U.S.C. 103(a) rejection of claim 24.

Note: V(T), is associated with each retransmitted frame and indicates the order in which the retransmitted frame with which it is associated is retransmitted relative to the sequence of frames transmitted for the first time and hence must be calculated for every retransmitted frame regardless of its position in the sequence or regardless of what subset the frame is in.

In addition, MPEP § 714.04 states, "In the consideration of claims in an amended case where no attempt is made to point out the patentable novelty, the claims should not be allowed. See 37 CFR 1.111 and MPEP § 714.02. An amendment failing to point out the patentable novelty which the applicant believes the claims present in view of the state of the art disclosed by the references cited or the objections made may be held to be not fully responsive and a time period set to furnish a proper reply if the statutory period has expired or almost expired (MPEP § 714.03). However, if the claims as amended are clearly open to rejection on grounds of record, a final rejection should generally be made".

Allowable Subject Matter

3. Claims 2, 8, 14 and 23 are objected to as being dependent upon respectively rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the respective base claims and respective intervening claims.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**JOSEPH TORRES
PRIMARY EXAMINER**

Joseph D. Torres, PhD
Primary Examiner
Art Unit 2133

Handwritten signature: *[Illegible]*